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TAGS: [PREL](#) [KCRM](#) [PGOV](#) [PTER](#) [IZ](#)  
SUBJECT: PRT KIRKUK: ASAYISH DETAINEES FACE POSSIBLE  
TRANSFER TO KIRKUK

Classified By: Kirkuk PRT Leader Howard Keegan for reasons 1.4 (b,d)

[1](#)1. (U) This is a PRT Kirkuk reporting cable.

[1](#)2. (C) Summary: The Iraqi Chief Justice has agreed to begin reviewing 229 cases of Asayish detainees in Sulimaniyah for possible transfer to Kirkuk. The Kirkuk Chief Judge has received a written order from the Chief Justice to begin reviewing the cases. This order has prompted the Kirkuk judicial leadership to produce a list of recommendations, including that the cases originating outside of Kirkuk be returned to those respective provinces. The Asayish commander in Qimaniyah ) whose organization arrested the suspects despite the dubious legality of operating outside the Kurdistan Regional Government's territory ) supports the basic principle of trying these detainees in Kirkuk, but is concerned some terrorist suspects might be released. End summary.

#### 229 Asayish Detainees Identified For Transfer

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[1](#)3. (C) Following extensive work over the past 18 months by the Kirkuk PRT, leading Embassy Rule of Law (ROL) officials, and top military leaders in Baghdad, Iraqi Chief Justice Medhat Al Mahmood agreed to support a review of 229 Asayish cases in which detainees have been in custody ) in some cases for over four years ) in Sulimaniyah awaiting adjudication. This issue has been complicated by the fact that the Higher Judicial Council (HJC), which administers Iraq's judges and courts, has no jurisdiction in Sulimaniyah. The KRG Ministry of Justice had such jurisdiction, which was transferred to the new Kurdistan Judicial Council established by the KRG's new Judicial Powers Act in November 2007, but the Asayish initiated the cases in Kirkuk.

#### Kirkuk Judicial Leadership Voices Concerns

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[1](#)4. (C) In response to Chief Justice Medhat's written order to Chief Judge Noaman of the Kirkuk Court of Appeals to evaluate and assess the approximately 229 Sulimaniyah Asayish detainee cases, the Kirkuk judicial leadership produced a written report on February 14 consisting of five observations and recommendations. The report recommended (a) that 34 detainees from outside of Kirkuk be tried in their respective provinces, (b) that the case files be translated from Kurdish to Arabic; (c) that HJC assume the cases prior to their transfer to Kirkuk, (d) that not all the cases be transferred for trial at once, and (e) that some of the detainees have been held for over four years, and that it may take an additional two years to properly investigate their cases. The Kirkuk Court of Appeals is currently awaiting the HJC's response to this report.

[1](#)5. (C) General Saif al-Din Ali Ahmed, the Commanding General of the Sulimaniyah Asayish, is eager to resolve the Kirkuk detainee issue. Negative press followed a report by Human

Rights Watch on Asayish detainees held in KRG custody and, in response, the KRG Prime Minister set up a process to review cases of detainees and charge or release them. Even before the issue became public, however, General Saif al-Din sought the technical assistance of the U.S. Department of Justice Correctional Advisory Program's Sulimaniyah Team in bringing the organization's detention facilities to higher standards. This paved the way for greater communication and cooperation on the issue between the Kirkuk PRT Governance and Rule of Law Teams in partnership with two successive U.S. Army Brigades.

¶16. (C) While General Saif al-Din agrees broadly with Chief Judge Noaman's memorandum, he has reservations on some points. In particular, General Saif al-Din feels that the point requiring the translation of the cases from Kurdish into Arabic, one of the official government languages of Iraq along with Kurdish, is offensive. General Saif al-Din also feels that the cases where an investigation has already taken place do not require another review by Kirkuk's Chief Investigative Judge Farooq. He instead advocates that these cases proceed directly to trial at the Major Crimes Court or an equivalent felony court in Kirkuk.

#### Concerns Over Possible Prisoner Release

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¶17. (C) The Kirkuk PRT QL team advised General Saif al-Din that some of these detainees might be released at the investigative or trial court in Kirkuk. The PRT cited the possibility that procedural or legal issues might lead to a dismissal of a case despite substantive evidence. While he is confident most defendants will be found guilty, he acknowledged the possibility that some cases might be

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dismissed. General Saif al-Din indicated this is why he discourages the re-investigation of cases, as some defendants would likely recant their initial confessions. Nevertheless, Chief Justice Medhat has authorized an initial review.

¶18. (C) Following an extended advisory session with the PRT ROL team, General Saif al-Din is preparing to hold an initial coordination meeting with Chief Judge Noaman, Chief Investigative Judge Farooq, Kirkuk Provincial Director of Police General Jamal, the KRG Ministry of Justice and the new KRG Judicial Council (headed currently by the deputy chief judge of the Court of Cassation) to resolve issues arising from the memorandum's five points, and (b) recommend beginning the project with 15 defendants to conduct an initial evaluation of the process.

#### Background on Asayish

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¶19. (C) The Asayish is the Kurdistan Regional Government's (KRG) internal security force which carries out law enforcement and investigative functions. The organization reportedly investigates terrorism cases and has been key in maintaining security in Irbil, Dohuk, and Sulimaniyah Provinces. Asayish elements in Sulimaniyah have arrested suspected terrorists inside Kirkuk Province. Top criminal justice officials report that they do so in order to prevent terrorist attacks from reaching Sulimaniyah's borders given its geographic proximity to Kirkuk. These arrests are not sanctioned by Kirkuk's government as the Asayish lack the jurisdiction to operate outside of the KRG.

¶10. (C) The arrests reportedly have been based on accurate intelligence. Criminal justice leaders inside and outside Sulimaniyah say the arrests have helped thwart terrorist attacks. Kirkuk law enforcement has reportedly even cooperated with the Asayish on occasion. These arrests, however, are outside the geographic and political bounds of Sulimaniyah and do not comport with rule of law principles. The situation thus makes for a delicate balance of public

protection versus rule of law principles. The situation is further complicated by Kirkuk's disputed political status under Article 140.

Comment

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¶11. (C) Coordination and discussion is necessary as soon as possible between General Saif al-Din and pertinent Kirkuk officials (i.e. Chief Judge Noaman, Chief Investigative Judge Farooq, and IP General Jamal), the KRG Ministry of Justice and the new KRG Judicial Council, which is still being stood up after the Judicial Powers Act passed in November 2007. The ROL Team later briefed Chief Judge Noaman, Chief Investigative Judge Farooq and IP General Jamal regarding these discussions and informed them that General Saif al-Din pledged to contact them for an initial coordination meeting. They stated that they were pleased with the progress and were looking forward to meeting with General Saif al-Din.

¶12. (C) There is likely to be lively discussion on the exact process for transferring detainees. While General Saif al-Din does not believe the cases should be re-investigated, this is likely to occur. This may be a point of contention as the Kirkuk investigative and trial court takes its judicial independence quite seriously and is unlikely to be directed by external suggestions. Even the agreement to begin reviewing cases of detainees illegally arrested and detained in Sulimaniyah is an extraordinary move for the Kirkuk judiciary.

¶13. (C) The Kirkuk PRT ROL Team has suggested that the adjudication of these cases follow the well-established formula for adjudicating terrorism and insurgency cases at the Kirkuk Major Crimes Court. The physical structures of the highly secure Major Crimes Court compound with judicial offices, judicial living quarters and a detention facility seem ideal.

¶14. (C) Non-Kurds in Kirkuk typically refer to Asayish detentions in Kirkuk as illegal. The transfer of the Asayish detainees is an issue of priority for the Arab Bloc, which cited the resolution of this issue as a condition to ending their yearlong boycott of the Provincial Council. Despite the Arab Bloc's call for the transfer of all Kirkuk detainees held in the KRG, they do not advocate releasing the detainees, only that they be given a fair trial under the law. They fully understand and expect those convicted of terrorism-related crimes to receive the full penalty under the law. Adjudicating these cases also helps the KRG resolve the issue of uncharged detainees in their facilities, something they have pledged to do following the Human Rights

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report release.  
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